



**Billing Code 3510-16-P**

**DEPARTMENT OF COMMERCE**

**United States Patent and Trademark Office**

**National Telecommunications and Information Administration**

**[Docket No.: PTO-P-2017-0003]**

**Public Meeting on Consumer Messaging in Connection with Online Transactions Involving Copyrighted Works**

**AGENCY:** United States Patent and Trademark Office, Department of Commerce; National Telecommunications and Information Administration, Department of Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Department of Commerce's Internet Policy Task Force (Task Force) will host a public meeting at the United States Patent and Trademark Office (USPTO) facility in Alexandria, Virginia, on April 18, 2017, to discuss how best to communicate to consumers regarding license terms and restrictions in connection with online transactions involving copyrighted works. This follows up on one of the recommendations that the Task Force presented in its January 2016 White Paper on Remixes, First Sale, and Statutory Damages.

**DATES:** The public meeting will be held on April 18, 2017, from 1:00 p.m. to 5:00 p.m., Eastern Standard Time. Registration will begin at 12:30 p.m.

**ADDRESSES:** The public meeting will be held at the United States Patent and Trademark Office, Global Intellectual Property Academy (GIPA), Madison Building (East), Second Floor, 600 Dulany Street, Alexandria, VA 22314. All major entrances to the building are accessible to people with disabilities.

**FOR FURTHER INFORMATION CONTACT:** For further information regarding the meeting, contact Nadine Herbert or Linda Quigley, Office of Policy and International Affairs, United States Patent and Trademark Office, Madison Building, 600 Dulany Street, Alexandria, VA 22314; telephone (571) 272-9300; e-mail Nadine.Herbert@uspto.gov or Linda.Quigley@uspto.gov. Please direct all media inquiries to the Office of the Chief Communications Officer, USPTO, at (571) 272-8400.

**SUPPLEMENTARY INFORMATION:**

**Background**

**A. Ongoing Government Engagement Relating to Copyright in the Digital Economy.**

The Department of Commerce established the Internet Policy Task Force (Task Force) in 2010 to identify leading public policy and operational issues impacting the U.S. private sector's ability to realize the potential for economic growth and job creation through the Internet. The Task Force has released two reports addressing copyright issues and the Internet, based on extensive stakeholder consultation and public input.

The Task Force's July 2013 report, Copyright Policy, Creativity, and Innovation in the Digital Economy (Green Paper),<sup>1</sup> was a comprehensive overview of copyright policy in the digital environment. In October 2013, the USPTO and NTIA published a request for public comments<sup>2</sup> relating to three areas of work flowing out of the Green Paper, including: (1) the legal

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<sup>1</sup> The Green Paper is available at <http://www.uspto.gov/sites/default/files/news/publications/copyrightgreenpaper.pdf>.

<sup>2</sup> Request for Comments on Department of Commerce Green Paper, Copyright Policy, Creativity, and Innovation in the Digital Economy, 78 Fed. Reg. 61337-61341, available at [https://www.ntia.doc.gov/files/ntia/publications/ntia\\_pto\\_rfc\\_10032013.pdf](https://www.ntia.doc.gov/files/ntia/publications/ntia_pto_rfc_10032013.pdf).

framework for the creation of remixes;<sup>3</sup> (2) the relevance and scope of the first sale doctrine in the digital environment;<sup>4</sup> and (3) the appropriate calibration of statutory damages in the contexts of individual file-sharers and secondary liability for mass online services.<sup>5</sup> Following the release of the Green Paper, stakeholders provided input on these policy issues through two rounds of written comments, a public meeting, and four roundtables held around the country.<sup>6</sup>

In its 2016 White Paper on Remixes, First Sale, and Statutory Damages<sup>7</sup> (White Paper), the Task Force addressed these three issues. As to the first sale doctrine, based on a weighing of benefits and risks, the Task Force determined that amending the law to extend the doctrine to digital transmissions of copyrighted works was not advisable at the time.

However, the Task Force did recommend non-legislative action to address certain concerns expressed by a number of stakeholders about the online marketplace for copyrighted works. These related to consumers' understanding of what they have purchased when they pay for copies of works delivered online.<sup>8</sup> The Task Force concluded that consumers would benefit from more information on the nature of these transactions, including whether they are paying for temporary access to content or for ownership of a copy, in order to instill greater confidence and

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<sup>3</sup> For a definition of remixes, please see the Green Paper, fn. 1 above, at p.28.

<sup>4</sup> For information about the first sale doctrine, please see the Green Paper, *id.* at p.35.

<sup>5</sup> For information about statutory damages, please see the Green Paper, *id.* at p.51.

<sup>6</sup> More information can be found at <https://www.uspto.gov/learning-and-resources/ip-policy/copyright/white-paper-remixes-first-sale-and-statutory-damages>.

<sup>7</sup> The White Paper is available at <http://www.uspto.gov/sites/default/files/documents/copyrightwhitepaper.pdf>.

<sup>8</sup> White Paper, pp. 55-58.

enhance participation in the online marketplace.<sup>9</sup> The Task Force therefore recommended the creation of a multistakeholder process to establish best practices to improve consumers' understanding of license terms and restrictions in connection with online transactions involving creative works.

## **B. The Proposed Focus of this Meeting**

In the White Paper, the Task Force concluded that when consumers download copies of works (such as eBooks, music, and motion pictures), they do not appear to have a clear understanding of what they can legally do with those copies. This is due in part to the length and opacity of most End User License Agreements (EULAs).<sup>10</sup>

Other factors that may contribute to consumer confusion include the labeling of the “buy” button, and the lack of clear and conspicuous information regarding the ownership status of copies obtained by means of digital transmissions. Commenters noted that it is common for online services to feature a “buy” button that a consumer must click on in order to obtain digital content, and they offered differing views as to what consumers believe they have obtained when they click on such a button.

The goal of this meeting is to explore issues and facilitate a discussion on how best to ensure that license terms related to copyright are clearly and effectively communicated to potential consumers in the online environment. We will not address whether the first sale doctrine should be applicable to digital transmissions, which the White Paper discussed at length (see

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<sup>9</sup> White Paper, p. 68.

<sup>10</sup> For purposes of this discussion, a EULA is a contract between a licensor and purchaser, establishing the scope of the purchaser's rights to use an acquired download of copyrighted content. EULAs are often available only in digital form, presented as a click-through where the user is required to accept or reject the terms.

Background Section above), or what license terms should or should not be imposed, but will focus on non-legislative solutions, which may include voluntary best practices.

One discussion topic will focus on what copyright-related terms and conditions are important to communicate to consumers in the online environment. Some examples of possible terms include: ownership (*i.e.*, whether ownership is transferred); use restrictions (*e.g.*, restrictions for noncommercial purposes; geographical limitations; limits to a certain number of viewings or devices); and/or transfer conditions (*e.g.*, restrictions on resale or other distribution).

Another discussion topic will focus on identifying best practices for how to inform consumers about the intellectual property rights associated with the content they are accessing or acquiring, and what activities they are permitted to engage in without implicating those rights. Questions to be addressed may include:

- What term or terms can clearly communicate what consumers are paying for?
- What term or terms should not be used (*e.g.*, “buy,” “own,” or “purchase”) in a digital transaction that is not a sale?
- Would a standardized form of notice, placed in or accessed from a conspicuous location on an e-commerce Web site or app be helpful?
- Would standard icons or symbols be helpful in communicating the terms, and what might those look like?
- Are there consumer messaging models from other fields (*e.g.*, in the consumer privacy context) that can provide useful lessons or examples in this area?

Finally, participants should be prepared to discuss whether additional work should be done to identify best practices in this area, and if so, in what forum and how.

## **Public Meeting**

On April 18, 2017, the Task Force will hold a public meeting to hear views on these issues, including on the process going forward. We seek participation and comment from interested stakeholders, including in particular online services that offer digital transmissions of works to consumers, as well as creators, right holders, consumers, marketing professionals, user interface designers, public interest groups, and academics.

The agenda for the public meeting will be available no later than the week prior to the meeting, and the meeting will be webcast and transcribed. The agenda and webcast information will be available on the Internet Policy Task Force Web site,

<http://www.ntia.doc.gov/internetpolicytaskforce>, and the USPTO's Web site,

<https://www.uspto.gov/learning-and-resources/ip-policy/copyright/internet-policy-task-force>.

The meeting will be open to members of the public to attend, space permitting, on a first-come, first-served basis. Registration is required and will be available on site on the day of the meeting, space permitting. Persons who have pre-registered (and received confirmation) will have seating held until 15 minutes before the program begins. Pre-registration for the meeting is available at: <http://www.cvent.com/d/fvqhvj/4W>.

The meeting will be physically accessible to people with disabilities. Individuals requiring accommodation, such as sign language interpretation, real-time captioning of the webcast or other ancillary aids, should communicate their needs to Nadine Herbert, Office of Policy and International Affairs, United States Patent and Trademark Office, Madison Building, 600 Dulany Street, Alexandria, VA 22314; telephone (571) 272-9300, at least seven (7) business days prior to the meeting. Attendees should arrive at least one-half hour prior to the start of the meeting,

and must present valid government-issued photo identification upon arrival. Members of the public will have an opportunity to make comments at the meeting.

Dated: March 16, 2017.

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Michelle K. Lee,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

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Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

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